



U.S. Department of Justice

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October 28, 2013

By ECF

The Honorable Paul A. Crotty
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *Residents for Sane Trash Solutions, Inc., et al. v.
United States Army Corps of Engineers, et al.*,
12 Civ. 8456 (PAC)

*Kellner, et al. v. United States Army Corps of
Engineers, et al.*, 12 Civ. 8458 (PAC)

Dear Judge Crotty:

This Office represents defendants the United States Army Corps of Engineers and Colonel Paul E. Owen (collectively, "USACE") in the above-referenced, related matters. We write concerning USACE's motion for summary judgment and supporting memorandum of law, which were filed today.

USACE has not filed a statement of undisputed facts pursuant to Local Civil Rule 56.1 in support of its motion. Because plaintiffs' claims against USACE are brought under the Administrative Procedure Act, 5 U.S.C. §§ 701-706 (the "APA"), review of the challenged agency action is based on the administrative record rather than extra-record material. *See, e.g., Natural Res. Def. Council, Inc. v. U.S. Dep't of Agric.*, 613 F.3d 76, 83-84 (2d Cir. 2010). "[T]he focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court." *Camp v. Pitts*, 411 U.S. 138, 142 (1973). Accordingly, plaintiffs' claims against USACE present only legal issues regarding the lawfulness of USACE's action in light of the administrative record, and there are not genuine issues of material facts potentially subject to a trial. *See Just Bagels Mfg., Inc. v. Mayorkas*, 900 F. Supp. 2d 363, 372 n.7 (S.D.N.Y. 2012) (cases based on the review of an administrative record "present[] only a question of law"); *Am. Bioscience, Inc. v. Thompson*, 269 F.3d 1077, 1083 (D.C. Cir. 2001) ("As we have repeatedly recognized, ... when a party seeks review of agency action under the APA, the district judge sits as an appellate tribunal. The entire case on review is a question of law."); *Buckingham*

Twp. v. Wykle, 157 F. Supp. 2d 457, 462 (E.D. Pa. 2001) (since APA cases are decided based on a review of the administrative record, “[t]here are thus generally no genuine issues of material fact in an APA case”).

As a result, a Local Civil Rule 56.1 statement listing the material facts as to which the moving party contends there is no genuine issue to be tried, and a counter-statement of additional material facts as to which it is contended that there exists a genuine issue to be tried, are neither necessary nor appropriate. *See, e.g., Just Bagels*, 900 F. Supp. 2d at 372 n.7 (directing parties not to submit a Local Rule 56.1 statements in APA administrative record review case); *Glara Fashion, Inc. v. Holder*, No. 11 Civ. 889 (PAE), 2012 WL 352309, at *1 n.1 (S.D.N.Y. Feb. 3, 2012) (no Rule 56.1. statement required in administrative agency review case); *Student X v. New York City Dep’t of Educ.*, No. 07-cv-2316, 2008WL 4890440, at *11 (E.D.N.Y. Oct. 30, 2008) (declining to require counter-statement of undisputed material facts in APA case because “the 56.1 Statement will not aid the court in its independent review of the [administrative] record”); *Karpovav. Snow*, 402 F. Supp. 2d 459, 465 (S.D.N.Y. 2005) (summary judgment appropriate without submission of statements of undisputed material facts in APA cases because the administrative record provides the Court with “all of the information necessary to determine whether material disputes of fact exist”).

However, in the event the Court determines that a Local Civil Rule 56.1 statement is required from USACE in connection with its motion for summary judgment, USACE is prepared to file a statement promptly.

We thank the Court for its consideration of this letter.

Respectfully submitted,

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